

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-v.-

ALBERTO WILLIAM VILAR and
GARY ALAN TANAKA,

Defendants.

**SECOND
PRELIMINARY ORDER OF
FORFEITURE AS TO
SUBSTITUTE ASSETS**

05 Cr. 621 (RJS)

WHEREAS, on or about August 15, 2006, ALBERTO WILLIAM VILAR and GARY ALAN TANAKA (together, the “Defendants”) were charged in a twelve-count Superseding Indictment, S3 05 Cr. 621 (KMK) (the “Indictment”), with securities fraud, investment adviser fraud, mail fraud, wire fraud, and money laundering, and conspiracy to commit such offenses;

WHEREAS, on or about November 19, 2008, a jury returned a guilty verdict against Defendant Vilar on all twelve counts of the Indictment and against Defendant Tanaka on Counts One, Three and Four of the Indictment;

WHEREAS, on or about April 25, 2014, the Court entered Preliminary Orders of Forfeiture/Money Judgment imposing joint and several money judgments against the Defendants in the amount of \$20,578,855.28, representing the amount of proceeds they obtained as a result of the offenses (the “Money Judgments”) (Dkt. Nos. 684 & 687);

WHEREAS, on or about August 2, 2019, the Court entered a Preliminary Order of Forfeiture as to Substitute Assets (Dkt. No. 802) forfeiting all of Defendants’ right, title and interest in certain funds and brokerage accounts (the “Substitute Assets”), finding that, due to the

acts or omissions of the Defendants, the proceeds of the offenses cannot be located upon the exercise of due diligence, have been transferred, sold to or deposited with a third party, have been placed beyond jurisdiction of the Court, or have been commingled with other property which cannot be divided without difficulty;

WHEREAS, the Substitute Assets are not sufficient to fully satisfy the Money Judgments; and

WHEREAS, the Government has identified the following additional assets in which the Defendants have an ownership interest:

- a. J.P. Morgan Chase brokerage account number 102-05012 MOD, held in the name of the Trustees of the Amerindo Advisors (UK) Ltd. Ret. Benefits Scheme

(the "Additional Assets").

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. All of the Defendants' right, title and interest in the Additional Assets are hereby forfeited to the United States of America, for disposition in accordance with the law, subject to the provisions of Title 21, United States Code, Section 853(n), except to the extent that the total portion of the Substitute Assets and the Additional Assets ultimately forfeited to the United States in a Final Order of Forfeiture after the adjudication of all third party interests exceeds the amount of the Money Judgments.

2. Pursuant to Title 21, United States Code, Section 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rules G(4)(a)(iv)(C) and G(5)(a)(ii) of the Supplemental Rules for Certain Admiralty and Maritime Claims and Asset Forfeiture Actions, the United States is permitted to publish forfeiture notices on the government internet site, www.forfeiture.gov. This site incorporates the forfeiture notices that have been traditionally

published in newspapers. The United States forthwith shall publish notice of this Second Preliminary Order of Forfeiture of Substitute Assets for at least thirty (30) consecutive days. Any person, other than the Defendants, claiming interest in the Additional Assets must file a Petition within sixty (60) days from the first day of publication of the notice on this official government internet web site, or no later than thirty-five (35) days from the mailing of actual notice, whichever is earlier. The government shall respond to any Petition(s) within thirty (30) days of receipt.

3. The published notice of forfeiture shall state that the petition (i) shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Additional Assets, (ii) shall be signed by the petitioner under penalty of perjury, and (iii) shall set forth the nature and extent of the petitioner's right, title or interest in the Additional Assets, the time and circumstances of the petitioner's acquisition of the right, title and interest in the Additional Assets, any additional facts supporting the petitioner's claim, and the relief sought, pursuant to Title 21, United States Code, Section 853(n).

4. Pursuant to 32.2 (b)(6)(A) of the Federal Rules of Criminal Procedure, the Government shall send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

5. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture with respect to the Additional Assets pursuant to Title 21, United States Code, Section 853(n), in which all interests will be addressed. All Additional Assets forfeited to the United States under a Final Order of Forfeiture shall be applied towards the satisfaction of the Money Judgment.

6. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate

or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas.

7. The Court shall retain jurisdiction to enforce this Second Preliminary Order of Forfeiture as to Substitute Assets, and to amend it as necessary, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

8. The Clerk of the Court shall forward three certified copies of this Second Preliminary Order of Forfeiture as to Substitute Assets to Assistant United States Attorney Alexander J. Wilson, Co-Chief of the Money Laundering and Asset Forfeiture Unit, United States Attorney's Office, One St. Andrew's Plaza, New York, New York 10007.

SO ORDERED.

Dated: December 9, 2019
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation